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## MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2005, by, between and among the following parties:

- The Town of Acton, a municipal corporation, having its principal office at Town Hall, 472 Main Street, Acton MA 01720 (hereinafter referred to as the "Town");
- Atlantic-Acton Realty Limited Partnership, a Massachusetts limited partnership with a principal place of business at 205 Newbury Street, Framingham, MA 01701 ("Atlantic-Acton");
- Autoplex I, LLC, a Massachusetts limited liability company, with a principal place of business at 6 Proctor Street, Acton, MA 01720, acting by and through its manager Leo F. Bertolami ("Autoplex"); and
- Acton Ford, Inc., a Massachusetts corporation with a principal place of business at 76 Powder Mill Road, Acton, MA ("Acton Ford").

Atlantic Acton, Autoplex and Acton Ford are collectively referred to herein as the "Private Parties."

WHEREAS Atlantic-Acton owns the real property located at and known as 82 Powder Mill Road, Acton, MA, which is shown as Assessors' Map ID No. J3/34/8 (the "Powder Mill Plaza Property").

WHEREAS the Powder Mill Plaza Property is not currently served by a public sanitary sewer line.

WHEREAS Autoplex owns the real property located at and known as 76 Powder Mill Road, Acton, MA, which is shown as Assessors' Map ID No. J3/34/4 (the "Acton Ford Property").

WHEREAS Acton Ford leases from Autoplex the Acton Ford Property.

WHEREAS the Acton Ford Property is not currently served by a public sanitary sewer line.

WHEREAS the Town of Acton has recently completed construction of the Fort Pond Brook Sewage Treatment Plant and associated public sewer lines and facilities.

WHEREAS the public sewer line nearest to the Powder Mill Plaza Property and the Acton Ford Property is located northwesterly at approximately the intersection of High Street and Adams Street, Acton, MA.

WHEREAS Atlantic-Acton desires to connect the Powder Mill Plaza Property to the public sewer.

WHEREAS Autoplex and Acton Ford desire to connect the Acton Ford Property to the public sewer.

WHEREAS the Town commissioned a feasibility study of a potential sewer system expansion to enable the Powder Mill Plaza Property and the Acton Ford Property, among others, to connect to the public sewer system via a new force main installed in High Street from a new pumping station near the intersection of High Street and Massachusetts Avenue to the existing sewer at the corner of High Street and Adams Street (hereinafter, the "High Street Sewer Extension"), the results of which are summarized in a report prepared by Woodard & Curran dated September 12, 2003, entitled Final Letter Report, Feasibility Study for Sewer System Expansion, Acton, Massachusetts, a copy of which is attached as Exhibit A.

WHEREAS based on discussions among the parties, Woodard & Curran prepared a supplemental report dated March 23, 2005, entitled Project Status and Path Forward, High Street Sewer System Expansion, Acton, Massachusetts, a copy of which is attached as Exhibit B.

WHEREAS the Town of Acton and the Acton Board of Selectmen acting as the Sewer Commissioners of the Town of Acton (the "Board") have respectively adopted a sewer Bylaw and Sewer Use Regulations applicable to sewer connections and sewer use in the Town of Acton, copies of which are attached as Exhibits C (the "Bylaw") and D (the "Regulations").

WHEREAS the Board is authorized by Section 7.05 of the Bylaw to "establish reasonable fees pursuant to G.L. c. 83, § 17, to cover costs of construction of common sewers and other facilities required to serve land not previously served by the sewer system and not previously assessed to the owner of such land" and any such fee "shall be reduced to the extent the landowner pays such expenses, in accordance with G.L. c. 83, § 22."

WHEREAS the estimated costs of the publicly-owned portion of the High Street Sewer Extension Project as set forth in Exhibit B, Table 1 exceeded the estimated betterment that would be attributable to Powder Mill Plaza Property and the Acton Ford Property in the event each was to be bettered pursuant to the applicable Bylaw provisions.

WHEREAS the Powder Mill Plaza property is operating under US EPA NPDES Permit No. MA0028835, which is currently being reissued by the US EPA.

WHEREAS the Town of Acton has agreed to provide reasonable cooperation to Atlantic-Acton in the form of support for any reasonable requests by Atlantic-Acton as the owner of the Powder Mill Plaza property, or its designee, to modify US EPA NPDES Permit No. MA0028835

in the interim until such permit can be terminated due to the completion of construction of the High Street Sewer Extension.

WHEREAS Atlantic-Acton is willing in accordance with this Agreement to pay the construction cost of the High Street Sewer Extension Project pursuant to the terms of this Memorandum of Agreement, and Autoplex and Acton Ford are willing to contribute toward said costs in accordance with a separate agreement between and among Atlantic-Acton, Autoplex and Acton Ford executed contemporaneously herewith.

WHEREAS the Board is willing to establish a reasonable fee pursuant to Section 7.05 of the Bylaw and G.L. c. 83, § 17, reduced in accordance with G.L. c. 83, § 22, as set forth in this Agreement.

WHEREAS Atlantic-Acton is willing in accordance with this Agreement to pay the sewer privilege fee for the Powder Mill Plaza Property and the Acton Ford Property pursuant to the terms of this Memorandum of Agreement, and Autoplex and Acton Ford are willing to contribute toward said sewer privilege fee in accordance with a separate agreement between and among Atlantic-Acton, Autoplex and Acton Ford executed contemporaneously herewith.

NOW THEREFORE, for one dollar and other adequate consideration the receipt and sufficiency of which are hereby acknowledged, the Town, Atlantic-Acton, Acton Ford and Autoplex agree as follows:

1. **Design of Common Sewer and Related Facilities**

1.1 The Town shall engage Woodard & Curran or a qualified design engineer, in accordance with all applicable designer selection laws and regulations, to perform to the Town's specifications all necessary design services for the publicly-owned portion of the High Street Sewer Extension Project consisting of: (a) a 1,400 linear foot force main within the High Street right-of-way primarily off the existing pavement from Powder Mill Plaza to the existing Adams Street sewer line; (b) a pump station capable of pumping 21,100 gallons per day of peak water/sewer flows from Powder Mill Plaza and other future flows to the existing sewer at the intersection of Adams and High Street, that meets all appropriate Town design standards, situated within an easement area, the location of which is to be identified by Atlantic-Acton and acceptable to the Town, on the west side of the Powder Mill Plaza Property (the "Pump Station"); (c) a low pressure sewer system that satisfies the Town standards with regard to sewer collection for the applicable High Street abutters, which system shall include individual grinding pumping units for each residential abutter with frontage along High Street between Adams Street and Massachusetts Avenue as of the date of this Agreement; and (d) re-paving limited to the trench width of disturbed areas to match the pavement cross-section of the adjacent pavement.

1.2 It is estimated that the design work will cost \$26,200. A copy of the design fee estimate is attached hereto as Exhibit E.

1.3 Prior to the commencement of design services, Atlantic-Acton shall pay to the Town of Acton in accordance with G.L. c. 44, § 53A, the sum of \$26,200 to be held in a separate account and used by the Town to pay for the design services set forth in Paragraph 1.1 above. In the event the actual cost of those design services is less than the estimated amount, the Town shall refund the difference to Atlantic-Acton within thirty days of completion of the design services. Provided Bids are taken within six (6) months from the execution of this agreement, completion of design services shall be defined as the date on which final Construction Bids are received.

1.4 In the event the actual cost of the design services exceeds the estimated amount set forth in Paragraph 1.2 above, by up to 10 percent, Atlantic-Acton shall within fourteen (14) days of a written request from the Town Manager pay to the Town in accordance with G.L. c. 44, § 53A, all additional funds necessary to cover the costs of those design services. In the event the actual cost of the design services exceed the estimated amount by more than 10 percent, Atlantic-Acton may, at its sole option, pay to the Town in accordance with G.L. c. 44 § 53A the additional design fees or terminate this Memorandum of Agreement in accordance with Paragraph 8.1

1.5 Atlantic-Acton shall retain Woodard & Curran or a qualified design engineer to design the private sewer line and associated facilities necessary to connect the Powder Mill Plaza Property and the Acton Ford Property to the Pump Station (the "Powder Mill Plaza Connection") and to decommission the existing private waste water treatment facility situated on the Powder Mill Plaza Property. Atlantic Acton shall pay directly to design engineer all costs associated with those design services.

## **2. Permits and Approvals**

2.1 The Town and the Private Parties shall respectively apply for all governmental licenses, permits, approvals or other relief required for the publicly-owned and privately-owned portions of the High Street Sewer Extension Project (the "Extension Project"), including applications for orders of conditions, determinations of applicability, zoning permits or variances, special use permits, and construction permits (collectively, the "Government Approvals"). The Private Parties agree to reasonably assist the Town with such applications for the Government Approval for the publicly-owned portion of the Extension Project. The Town agrees to reasonably assist the Private Parties with such applications for the Government Approvals by state or federal agencies for the privately-owned portion of the Extension Project.

2.2 The estimated cost of permitting the public portion of the Project is \$4,500.

2.3 Prior to the Town's application for such Government Approvals, Atlantic-Acton shall pay to the Town of Acton in accordance with G.L. c. 44, § 53A, the sum of \$4,500 to be held in a separate account and used to pay for services related to obtaining Government Approvals for the publicly-owned portion of the project. In the event the actual cost of those

services is less than that amount, the Town shall refund the difference to the Atlantic –Acton within thirty days of completion of those services. In the event the actual cost of those services exceeds the amount deposited, Atlantic-Acton shall within seven days of a written request from the Town Manager pay to the Town in accordance with G.L. c. 44, § 53A, all additional funds necessary to cover the costs of those services.

2.4 The Private Parties shall pay for all reasonable costs and expenses incurred by them, respectively, in connection with applying for, obtaining and maintaining throughout the pre-construction and construction period all necessary Government Approvals for the Powder Mill Plaza and Acton Ford connections.

2.5 Until the High Street Sewer Extension Project is completed, the Powder Mill Plaza property is, at its own expense and liability exposure, operating under US EPA NPDES Permit No. MA0028835. Said permit imposes a new schedule for the implementation of a more restrictive total phosphorus effluent discharge limits than in the prior version of the permit. In the absence of the timely availability to connect to the public sewer, Atlantic-Acton may need to apply to US EPA for an extension of time for the implementation of its permit's new effluent limitations. Should events beyond the control of the the Town and/or Atlantic-Acton delay the construction of the public sewer, the Town agrees to provide reasonable cooperation and support to Atlantic-Acton, including written requests and attendance at meetings by appropriate town personnel, to support any reasonable request by Atlantic-Acton, or its designee, for such an extension and/or to modify US EPA NPDES Permit No. MA0028835 in the interim until construction of the High Street Sewer Extension is completed. The Town shall incur no expense or liability arising out of or related to any such delay or alleged failure to cooperate.

### 3. **Pump Station Easement**

3.1 Subject to acceptance by the Board of Selectmen as authorized by the Special Town Meeting on June 13, 2005, and prior to the issuance of a Request for Bids as set forth below for construction of the Project, Atlantic-Acton shall convey to the Town an easement in a form and scope mutually satisfactory to both Atlantic-Acton's Title Company and counsel and to Town Counsel sufficient to permit the design, construction, operation, maintenance, use, repair, renovation, improvement, enlargement, access to and from, and removal of the Pump Station and associated lines, connections, equipment and appurtenances, in, on, over, beneath and through the west side of the Powder Mill Plaza Property as set forth in Section 1.1 of this Agreement (the "Pump Station Easement"). The effort and cost of preparing the easement drawing(s) shall be included in the design of the Project under Section 1.1, and shall be to the same standards used by the Town for other sewer easement drawings.

3.2 In the event the Board of Selectmen notifies the Private Parties that it declines to accept said easement, the Town shall return to Atlantic-Acton any uncommitted and unexpended funds paid by Atlantic-Acton pursuant to this Agreement above, and neither the Town nor the Private Parties shall have any further rights or obligations to proceed with the activities described

in this Agreement, and this Agreement shall be null and void.

**4. Public Bidding for the Construction of the High Street Sewer Extension Project**

4.1 Pursuant to G.L. c. 30, § 39B, the Town shall within forty-five days of completion of the design for the publicly-owned High Street Sewer Extension Project draft all necessary documents for and (upon finalization of those documents pursuant hereto, final issuance of all necessary Government Approvals and recording of the Pump Station Easement) issue a Request for Bids ("RFB") for the construction of the High Street Sewer Extension Project in accordance with the design resulting from Section 1.0 (the "Project"). As Atlantic-Acton shall be paying for the construction work for the High Street Sewer Extension Project as set forth in this Agreement, Atlantic-Acton shall have the right to review and comment on the proposed bid specifications. To that end, the Town shall provide to Atlantic-Acton a draft set of bidding documents, including the proposed construction contract, prior to their issuance to ensure consistency with this Agreement. Within five business days of the receipt thereof, Atlantic-Acton may provide written comments to the Town with respect thereto. Subject to applicable legal requirements, the Town shall have the absolute discretion whether to incorporate Atlantic-Acton's proposed revisions into the bidding documents or to reject those proposed revisions. The Town shall notify Atlantic-Acton of the Town's determinations in this regard prior to the issuance of the RFB. Within five business days of the receipt thereof, Atlantic-Acton may object in writing to the Town's rejection of some or all of the proposed revisions, in which case the Town shall not issue the RFB and the High Street Sewer Extension Project shall not proceed in accordance with this Agreement.

4.2 Within seven days of a written request from the Town Manager with supporting documentation and invoices, Atlantic-Acton shall pay to the Town in accordance with G.L. c. 44, § 53A, the actual costs incurred by the Town in preparing and issuing the Request for Bids. The Town may retain Woodard & Curran or a qualified design engineer to administer the public bid process, including without limitation central register notification, legal advertisements, distributing plans and specifications, issuing addenda as necessary, holding a pre-bid meeting, conducting a bid opening, post bid review of bids, required documents, references, and a recommendation to award. The estimated cost of administering the public bid process is \$4,000. The Town shall reserve the right to reject all bids submitted in response to the RFB.

4.3 The Town shall publicly open and record all bids submitted in response to the RFB at the time and place set forth in the RFB. The Town Manager shall within fourteen days of the bid opening preliminarily identify the apparent lowest responsible and eligible bidder. The Town shall provide a copy of that bid to Atlantic-Acton who shall have fourteen days from receipt thereof to notify the Town Manager as to whether Atlantic-Acton will pay for the Town's costs to construct the Project as described herein and pay the amount of the lowest eligible and responsible bid.

4.4 In the event Atlantic-Acton does not so agree in writing, the Town shall reject all bids in which case the High Street Sewer Extension Project shall not proceed in accordance with this Agreement unless the Town and Atlantic-Acton shall mutually agree on satisfactory alternative arrangements.

4.5 In the event Atlantic-Acton does agree in writing delivered to the Town Manager within fourteen days of the receipt of the Bid, to pay for all such costs and expenses (the "Atlantic-Acton Authorization to Proceed"), the Town shall award the contract to the lowest eligible and responsible bidder (the "Contractor") as soon as reasonably possible thereafter (the "Notice of Award").

## **5. Construction of the High Street Sewer Extension Project**

5.1 Upon receipt of the Atlantic-Acton Authorization to Proceed, final issuance of all Government Approvals, recording of the Pump Station Easement, and issuance of the Notice of Award, the Town shall undertake and cause the Project to be completed as set forth in the RFB. The Town shall use reasonable and appropriate efforts to complete the Project on budget and on time in accordance with the contract awarded under the Notice of Award (the "Contract").

5.2 The Town may retain Woodard & Curran or a qualified engineer to provide Construction Administration and Oversight services, including without limitation submittal reviews, enforcing the provisions of the plans and specifications, reviewing contractor payment applications, RFIs, PCOs, holding status meetings, overseeing start-up and preparing record drawings.

5.3 The estimated cost of such construction oversight for the construction phase is \$25,600.

5.4 In the event that the Contractor proposes any direct costs and expenses of the construction of the Project which exceed the awarded contractor's costs (i.e. "change order") during the term of the work on the Project, the Town shall in its discretion act on such change order in accordance with applicable law and the terms of the construction contract. The Town's representative will make a reasonable effort to consult with Atlantic-Acton's duly authorized representative and with the Contractor in an effort to determine that the change order falls within the scope of the project and is necessary to complete the intent of the Project as described herein and if there are any reasonable and appropriate methods to mitigate the expense and delay associated with the change order. Notwithstanding such consultation, the Town reserves the right to approve any such change order in accordance with applicable law and the terms of the construction contract.

5.5 Atlantic-Acton shall pay the Town for all change orders and all associated costs and expenses. Without limitation, Atlantic-Acton shall pay the Town for reasonable direct costs and expenses related to and necessary to complete the intent of the construction of the Project

including permitting, design, and construction engineering, construction oversight, administration (police and fire details, ordinary and necessary town fees, and Acton Water District or other utility inspection costs, if any), and costs, if any. All police details, fire details and inspections shall be required only to the extent such details or inspections are ordinarily required for similar work in the Town of Acton.

5.6 Atlantic-Acton shall pay for all costs and expenses to construct and connect the Powder Mill Plaza sewer line to the Pump Station for the High Street Sewer Extension Project.

6. **Method of Payment and Security for Payment**

6.1 Along with Atlantic-Acton's Authorization to Proceed, Atlantic-Acton shall deliver to the Town Manager a certified check payable to the Town in the amount of the construction costs under the Contract awarded under the Notice of Award plus the estimated cost of such construction oversight for the construction phase under Section 5.3 above, which funds shall be deposited pursuant to G.L. c. 44, § 53A, in a separate account for the purpose of payment toward construction costs of the Project.

6.2 During the course of construction, as invoices are submitted to the Town by the Contractor, the Town shall tender copies of such invoices to Atlantic-Acton for review and written comment. The Town shall pay said invoices as required by law and by the construction contract, from the account established under Section 6.1 above.

6.3 Subject to Sections 5.4 and 5.5 above, in the event approved change orders or other circumstances result in an increase in the cost of the construction of the Project, Atlantic-Acton shall, within seven days of receipt of a written request from the Town, pay to the Town sufficient funds to cover each such increase, said funds to be deposited pursuant to G.L. c. 44, § 53A, in a separate account for the purpose of payment toward construction costs of the Project.

6.4 Interest on the funds paid to the Town by Atlantic-Acton under Sections 6.1 and 6.3 above shall remain with and shall become a part of the account and may be expended as part of the account for construction of the Project without further appropriation.

6.5 In the event any funds remain in the account after completion of the Project and final acceptance by the Town, said funds shall be promptly refunded to Atlantic-Acton.

7. **Payment in Lieu of Betterment**

7.1 Pursuant to Section 7.05 of the Bylaw and the agreement of the parties, the Board of Selectmen acting as the Sewer Commissioners of the Town of Acton calculates the sewer privilege fee chargeable to the Private Parties as \$185,000 (representing the amount of \$358,881 minus the amount of \$173,881 (representing the sum of \$80,000 (the value of the public portion of the pumping station), plus \$70,000 (the value of the pump station easement), plus \$12,000 (the

value of three grinder pumps to be purchased as part of the Project for use by owners of other real property fronting on High Street in the event they connect to the low pressure line to be installed as part of the Project), plus \$11,881 (as a credit toward indirect costs of the Project)).

7.2 Atlantic-Acton on behalf of the Private Parties agrees to pay to the Town within ten days after notice of completion of the Project and prior to final acceptance by the Town and prior to connection by the Private Parties or either of them to the High Street Sewer Extension, the amount of \$185,000 as if said amount constituted the Private Parties' final sewer betterment and in lieu thereof. This payment in lieu of betterment shall represent the equivalent of 19.78 Sewer Betterment Units for the Powder Mill Plaza Property and 9.37 Sewer Betterment Units for the Acton Ford Property regardless of when the Private Parties connect to the Extension Project. In the event Atlantic-Acton fails to timely pay that amount to the Town, interest shall accrue at the rate of 18% per year. The Town agrees that, upon completion of the project and payment of the amount in Section 7.2 hereof, the Owners of the Powder Mill Plaza Property and the Acton Ford Property (a) shall be entitled to connect those properties to the sewer system and begin discharging appropriate wastes thereto up to the equivalent limit of 19.78 Sewer Betterment Units for the Powder Mill Plaza Property and 9.37 Sewer Betterment Units for the Acton Ford Property, and (b) shall not, unless otherwise required by law, be liable for any further sewer betterment assessment with respect to those properties as a result of the final outcome or settlement of the W.R.Grace appeal of its final sewer betterment (the "Grace matter"). In the event that Atlantic-Acton does not within three months of completion of construction connect the Powder Mill Plaza Property to the High Street Sewer Extension and at a later time Atlantic-Acton seeks to connect thereto, and the Powder Mill Plaza Property then exceeds the equivalent of 19.78 Sewer Betterment Units, an additional sewer privilege fee calculated in accordance with the Bylaw may be assessed for the Powder Mill Plaza Property. In the event that Autoplex does not within three months of completion of construction connect the Acton Ford Property to the High Street Sewer Extension and at a later time Autoplex seeks to connect thereto, and the Acton Ford Property then exceeds the equivalent of 9.37 Sewer Betterment Units, an additional sewer privilege fee calculated in accordance with the Bylaw may be assessed for the Acton Ford Property.,

7.3 In the event that the Town assesses betterments or sewer privilege fees against owners of other real property fronting on High Street or elsewhere whose properties are bettered by the construction of the common sewer in High Street, the Town shall be entitled to retain all such betterment charges without offset or reduction based on the costs paid by Atlantic-Acton under this Agreement.

7.4 The Town reserves the right to charge sewer use charges to the owners and operators of the Atlantic-Acton Property and the Acton Ford Property respectively and separately, pursuant to the Town's Bylaw and Regulations with respect thereto provided same is charged consistent with similarly situated users within the sewer district and consistent with the terms and conditions of Section 7 Subsection 7.1 above.

8. **Termination**

8.1 Atlantic-Acton may terminate this Agreement by written notice to the Town as follows:

- (a) In the event any required Governmental Approval is denied for the High Street Sewer Extension Project, Atlantic-Acton may terminate this Agreement by written notice to the Town, in which case this Agreement shall be null and void and without further recourse of the parties except for payment obligations accruing prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton.
- (b) In the event the actual cost of the design services under Sections 1.2 and 1.4 exceeds the estimated amount by more than 10 percent, Atlantic-Acton may terminate this Agreement by written notice to the Town within fourteen (14) days of a written request from the Town Manager to pay for those increased costs of design services in accordance with Section 1.4 hereof, in which case this Agreement shall be null and void and without further recourse of the parties except for payment obligations accruing prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton..
- (c) In the event the Towns fails to incorporate reasonable revisions to the bidding documents requested by Atlantic-Acton pursuant to Section 4; Subsection 4.1, in which case this Agreement shall be null and void and without further recourse of the parties except for payment obligations accruing prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton.
- (d) In the event Atlantic-Acton does not agree in writing under Section 4.4 to pay the amount of the lowest responsible bid submitted in response to the RFB, Atlantic-Acton may terminate this Agreement by written notice to the Town within fourteen (14) of its receipt of a copy of the lowest responsible bid, in which case the Town shall reject all bids for the High Street Sewer Extension Project and this Agreement shall be null and void and without further recourse of the parties, except for payment obligations accruing prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton

8.2 The Town may terminate this Agreement by written notice to Atlantic-Acton as follows:

- (a) In the event any required Governmental Approval is denied for the High Street Sewer Extension Project, the Town may terminate this Agreement by written notice to Atlantic-Acton, in which case this Agreement shall be null and void and without further recourse of the parties except for payment obligations accruing

prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton.

(b) In the event Atlantic-Acton insists upon revisions to the bidding documents unacceptable to the Town pursuant to Section 4, Subsection 4.1, in which case this Agreement shall be null and void and without further recourse of the parties except for payment obligations accruing prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton.

(c) In the event Atlantic-Acton does not within 10 days of a written request from the Town convey to the Town the Pump Station Easement in a form and scope satisfactory to Town Counsel, the Town may terminate this Agreement by written notice to Atlantic-Acton, in which case the this Agreement shall be null and void and without further recourse of the parties, except for payment obligations accruing prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton..

(d) In the event the Town determines to reject all bids submitted in response to the RFB, the Town may terminate this Agreement by written notice to Atlantic-Acton, in which case the Town shall reject all bids for the High Street Sewer Extension Project and this Agreement shall be null and void and without further recourse of the parties, except for payment obligations accruing prior to the notice of termination and the return of all other uncommitted and unexpended funds to Atlantic- Acton.

## **9. Notice**

All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party (or its successor) may from time to time designate by written notice:

### **Atlantic-Acton:**

Atlantic-Acton Realty Limited Partnership  
C/o Atlantic Management Corporation  
205 Newbury Street  
Framingham, MA 01701  
Attention: Asset Manager

**Town:**

Don P. Johnson  
Town Manager  
Town of Acton  
472 Main Street  
Acton, MA 01720

With a copy to:

Stephen D. Anderson, Esq.  
Anderson & Kreiger, LLP  
43 Thorndike Street  
Cambridge, MA 02141

**10. Governing Law.**

This Agreement and the rights and obligations of the parties hereunder shall in all respects be construed as a Massachusetts contract and shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts. All parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of any State or Federal court sitting in Massachusetts over any suit, action or proceeding arising out of or relating to this Agreement.

**11. Partial Invalidity**

If any provision of this Agreement shall be determined to be unenforceable in any circumstances by a court of competent jurisdiction, then at the option of the Town the balance of this Agreement shall be enforceable nonetheless, and the subject provision shall be enforceable in all other circumstances.

**12. Authority**

Each individual signing this Agreement on behalf of the Private Parties warrants and represents to Town that he or she is authorized to do so by all requisite actions of the party for whom he or she signs. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

**13. No Waiver**

Failure of any party to this Agreement to avail itself or any of the terms, covenants and conditions of this Agreement for a period of time or at any time or times, shall not be construed or deemed to be a waiver of any of its rights hereunder.

**14. Amendments.**

No change, amendment modification, cancellation or termination of this Agreement hereof, or any part of this Agreement shall be valid unless all parties to this Agreement consent thereto in writing.

**15. Counterparts.**

This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement which shall be binding on all of the parties hereto.

**16. Entire Agreement.**

This Agreement embodies the entire Agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

WHEREFORE the parties have set their hands and seal to this Memorandum of Agreement on this \_\_\_\_ day of \_\_\_\_, 2005.

TOWN OF ACTON, MASSACHUSETTS,  
By its Board of Selectmen acting as the  
Board of Sewer Commissioners

\_\_\_\_\_  
Peter K. Ashton, Chairman

\_\_\_\_\_  
Walter M. Foster, Vice Chairman

\_\_\_\_\_  
Lauren Rosenzweig

\_\_\_\_\_  
F. Dore' Hunter, Acting Clerk

**NE  
SIGN  
HERE**



ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned Notary Public, personally appeared each of the foregoing named members of the Board of Selectmen of the Town of Acton acting as the Board of Sewer Commissioners, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding document, and acknowledged to me that each signed it voluntarily for its stated purpose as the foregoing named members of the Board of Selectmen of the Town of Acton, acting as the Board of Sewer Commissioners.

\_\_\_\_\_  
(official signature and  
seal of notary)

My commission expires \_\_\_\_\_

Atlantic-Acton Realty Limited Partnership,  
By all of its General Partners,

\_\_\_\_\_  
Irene T. Gruber  
General Partner

\_\_\_\_\_  
David A. Capobianco  
General Partner

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned Notary Public, personally appeared the foregoing \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the persons

whose names are signed on the preceding document, and acknowledged to me that each signed it voluntarily for its stated purpose as all of the general partners of the Atlantic-Acton Realty Limited Partnership.

\_\_\_\_\_  
(official signature and seal of notary)

My commission expires \_\_\_\_\_

Autoplex I, LLC

\_\_\_\_\_  
Leo F. Bertolami, Its Duly Authorized Manager

#### ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned Notary Public, personally appeared the foregoing Leo F. Bertolami, Duly Authorized Manager of Autoplex I, LLC, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Duly Authorized Manager of Autoplex I, LLC.

\_\_\_\_\_  
(official signature and seal of notary)

My commission expires \_\_\_\_\_

Acton Ford, Inc.

\_\_\_\_\_  
Leo F. Bertolami, President

\_\_\_\_\_  
Coleman Hoyt, Treasurer

ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

On this \_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned Notary Public, personally appeared the foregoing Leo F. Bertolami, President, and Coleman Hoyt, Treasurer of Acton Ford, Inc., proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the persons whose names are signed on the preceding document, and acknowledged to me that each signed it voluntarily for its stated purpose as the Duly Authorized President and Treasurer of Acton Ford, Inc.,

\_\_\_\_\_  
(official signature and  
seal of notary)

My commission expires \_\_\_\_\_

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